

N.D.A.G. Letter to Van De Streek (Oct. 17, 1985)

October 17, 1985

Mr. Nevin Van de Streek
Minot City Attorney
P.O. Box 1697
Minot, ND 58701

Dear Mr. Van de Streek:

Thank you for your letter of October 3, 1985, regarding the application of N.D.C.C. 25-16-14.

N.D.C.C. 25-16-14(2) provides:

25-16-14. DEFINITIONS - GROUP HOMES FOR
DEVELOPMENTALLY DISABLED PERSONS - ZONING.

* * *

2. Notwithstanding the provisions of chapter 11-33, 40-47, or 58-03, or any other provisions authorizing any political subdivision to establish or enforce zoning regulations, a licensed group home serving six or fewer developmentally disabled persons shall be considered a permitted use in a single family or equivalent least density residential zone, and a licensed group home serving eight or fewer developmentally disabled persons shall be considered a permitted use in any area zoned for residential use of greater density than single family use.

You ask if this section permits staff persons, who may be reasonably required to control, supervise, and serve the developmentally disabled persons, to reside in the licensed group home in addition to the developmentally disabled persons, notwithstanding any local zoning regulation which may be in conflict.

The statute reflects the legislature's clear intention that group homes for developmentally disabled persons be a permitted use in residential areas. The statute defines the terms "developmentally disabled person" and "group home" in a manner which leads inescapably to the conclusion that the legislature knew that at least some affected individuals could not reside independent of supervision. Therefore, to the extent that the presence of staff persons is reasonably necessary to accommodate the needs of developmentally disabled persons in the group home, those staff members' presence must be tolerated notwithstanding any local zoning regulation.

Sincerely,
Nicholas J. Spaeth

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